

**Land Ownership Conditions and Restrictions, Conversion,
Subdivision, Partition And Amalgamation
Of Land In Malaysia**

1.0 Introduction

When one refers to landed property being bought, sold or valued, we are not strictly referring to the physical entity of the property only but rather to abstract interests which people may have in the property. It is the conditions and restrictions in the interests attached to the ownership of landed property which will influence its utility or extend to which it can be used thus contributing to its value.

Within the local context, the prevailing land legislation and planning laws govern and define the parameters of the land use policy of Peninsular Malaysia. In Malaysia, the main legislation affecting ownership and titles to landed property is the National Land Code, Act of Parliament No. 56 of 1965 (the NLC). It was introduced as an Act to amend and consolidate the laws relating to land and land tenure, the registration of title to land and of dealings therewith and collection of revenue therefrom within the states of Peninsular Malaysia.

Within Peninsular Malaysia, policy on land use begins when the respective State Government alienates a piece of land and issues a land title to a person or body under the NLC. Land once granted according to the provisions of the NLC will accordingly be subject to positive and negative conditions. As a general rule, failure to observe these conditions as stipulated upon alienation of the land, will render the land liable to forfeiture by the government without any compensation whatsoever. Private ownership of land in Malaysia as such is not absolute, in the sense that what the individual acquires is a 'tenure' from the State subject to him fulfilling the conditions to which the land is subjected to upon alienation by the State Authority. To beneficially use lands within the legal framework and provisions of the prevailing land legislations; provisions and conditions are laid down for land owners to apply for change of use of his land and even to apply to subdivide land into portions to be held under separate land titles.

Within the State administrative framework of land use control, the situation is such that in local authority areas where planning legislation is also applicable, permission from the local authority, which is responsible for physical planning in its area is necessary for any development or use of land within its administrative area. Having said such, nevertheless, conditions attach to land titles prevail over planning restriction. However in avoiding conflict between these two provisions, local authorities are always consulted before the government decides to grant land or allows application for change of use.

2.0 Categories of Land Use:

For land titles issued after the implementation of the provision of the NLC 1965 there exists three main categories of land use namely, "Agriculture", "Building" and "Industry".

2.1 "Agriculture" Land Use:

Agriculture includes the cultivation of any crop (including trees cultivated for the purpose of their produce), market gardening, and the breeding and keeping of livestock and fish.

2.2 "Building" Land Use:

Building includes any structure erected on land.

2.3 "Industry" Land Use:

Industry includes factories, workshops, foundries, warehouses, docks, jetties, railways, or other buildings or installations for use for or in connection with the purposes of manufacturing, smelting, the production or distribution of power, the storage, transport or distribution of goods, or other commodities and such other purpose as the state authority may prescribe.

For all land alienated under the Act, the land use category as prescribed by the State Authority shall be endorsed on the document of land title.

2.4 Objectives for the Imposition of Categories of Land Use:-

The concept of "category of land use" refers to the nature of the use of the land as allowed under the NLC.

These legal concepts are aimed to ensure that certain major objectives are attained by the land administrators, such as:-

- a) order in development eg. zoning for future industrial areas, planning for essential services, density control for health reasons or political considerations.
- b) maximum utilisation of land.
- c) identification for future acquisitions.

3.0 CONDITIONS AND RESTRICTIONS IN INTEREST AFFECTING LANDED PROPERTY OWNERSHIP:

All lands alienated by the State Authority according to the provisions of the Act, are subjected to the following endorsement on the document of title:

- a) its category of land use;
- b) the conditions attached to the land, comprising of "implied conditions" and "express conditions and restrictions in interest".

3.1 Conditions and Restrictions in Interest Affecting Alienated Land, in General:

Upon alienation, the conditions and restrictions in interest affecting the land can be in two main forms, namely;

a) Implied Conditions:

These comprise of conditions implied to all alienated land, conditions implied according to the category of land use imposed at the time of alienation, and additional implied conditions applicable to lands alienated before the commencement of the Act (before the commencement of the NLC Act 56 of 1965).

b) Express Conditions and Restrictions in Interest:

Express conditions affecting landed property interest are additional conditions imposed in addition to the implied conditions already imposed on landed property interest. These are to be found endorsed on or referred to in the document of land title, and comprise of conditions and restrictions imposed by the State Authority.

"Restrictions in interest" relates specifically to any limitation imposed by the State Authority on any powers conferred on a proprietor by NLC or any previous law.

3.2 The Nature of Implied and Express Conditions and Restriction in Interest Affecting Landed Property Ownership:

3.2.1 Implied and express conditions affecting landed property ownership.

In general, the nature of Implied Conditions and Restrictions in Interest affecting landed property ownership has to be viewed in two circumstances namely:

- (i) lands alienated under the provision of the Act i.e. NLC.
- (ii) lands alienated before the commencement of the Act.

3.2.1.1 Lands Alienated Under The Provision of the Act:

A. The Nature of Implied Conditions:

The nature of implied conditions affecting landed property is twofold, namely implied conditions affecting all alienated lands and implied conditions as implied according to the category of land use, as follows:-

a) Implied Conditions Affecting All Alienated Land -(S.114):

These conditions relate to the maintenance of boundary marks of the alienated lands by the proprietor.

(Refer to provisions of Section 114 of NLC for details.)

b) Implied Conditions Affecting Land Alienated Subject to the Category "Agriculture"-(S.115):

These conditions relate to the purpose to which the land can be used, the erection of building and the commencement and maintenance of the cultivation permitted on the land.

(Refer to provisions of Section 115 of NLC for details.)

c) Implied Conditions Affecting Land Alienated Subject to the Category "Building"-(S.116):

These conditions relate to the purpose to which the land can be used, the erection, maintenance, demolition, alteration and extension of the building permitted upon the land.

(Refer to provisions of Section 116 of NLC for details.)

d) Implied Conditions Affecting Land Alienated Subject to the Category "Industry"-(S.117):

These conditions relates to the purpose to which the land can be used, the erection of building and the maintenance, demolition, alteration, or extension of the building permitted upon the land.

(Refer to provisions of Section 117 of NLC for details.)

Note:

In so far as the Implied Conditions stipulated in Sections 115, 116 and 117 is concerned, the NLC provides that they are implied only in so far as they are not inconsistent with any express conditions to which the lands are for the time being subject.

B. The Nature of Express Conditions :

The State Authority is empowered to alienate land subject to such express conditions conformable to law as it thinks fit.

The express conditions affecting land alienated under this category will depend on the land use category imposed on the alienated land. The conditions vary between agriculture, building and industry land use, as can be seen below.

(i) Express conditions affecting land alienated subject to "Agriculture" land use category- (S.121):

The conditions imposed upon lands alienated subject to agriculture land use will be in respect of;

- (a) the cultivation requirement thereon or on any part or proportion thereof, of a particular crop, or of any class or description of crops,
- (b) prohibition of the cultivation of a particular crop, or of any class or description of crop,
- (c) the fixing of the date for commencement or completion of clearing, cultivation, sowing, manuring or harvesting, or any other agricultural activity,
- (d) limiting the maximum area of the land which may be occupied by dwelling houses and other building.

An example of the provisions of Express Conditions for agriculture land is as follows :-

- " 1. Tanah yang terkandung dalam hakmilik ini hendaklah ditanam dengan kelapa. Tanaman-tanaman lain kecuali tanaman getah dan kelapa sawit boleh juga ditanam di atas tanah ini dengan syarat pemilik tanah hendaklah mendapat kebenaran secara bertulis daripada Pemungut Hasil Tanah terlebih dahulu akan pertukaran atau tambahan jenis tanaman itu serta keluasan tanaman tersebut.
- 2. Pokok-pokok getah atau kelapa sawit tidak dibenarkan ditanam atau dibiarkan tumbuh di atas tanah ini.
- 3. Tidak lebih dari 1 ekar bahagian tanah ini boleh digunakan untuk bangunan ".

(ii) Express Conditions Affecting Land Alienated Subject to "Building" and "Industry" Land Use Categories:

The conditions imposed will be in respect to:

- a) the area or proportion of the land to be built upon,
- b) the type, design, height and structure of any building to be used in the construction,
- c) the dates on or before which any such building is to be commenced or completed,
- d) the use to which any land is to be put.

In addition, these express conditions cannot be inconsistent with any of the implied condition specified in section 114 of the NLC (boundary marks).

The express conditions affecting all alienated land will be dependent on the circumstances in which the land was alienated.

An example of the provisions of express conditions for building and industry land are as follows :-

a) Example of the provisions of Express Conditions for Industry land is as follows :-

- "1. Tanah yang terkandung di dalam hakmilik ini hendaklah digunakan semata-mata untuk Perusahaan Ringan.
2. Tanah yang terkandung di dalam hakmilik ini hendaklah digunakan semata-mata sebagai tapak bangunan untuk perusahaan kilang seragam dan lain-lain bangunan yang berkaitan dengan perusahaan itu.
3. Dalam tempoh 24 bulan daripada tarikh pendaftaran Suratan Hakmilik, tuan punya tanah hendaklah mendirikan sebuah kilang mengikut pelan yang diluluskan oleh Majlis Daerah atau sebarang Pihak Berkuasa.
4. Tiada satu bangunan pun dibenarkan didirikan atau digunakan untuk tujuan perumahan di atas tanah yang dikurniakan ini melainkan untuk tujuan tidak melebihi daripada 2 orang yang diambil kerja sebagai Jaga.
5. Tuan punya tanah hendaklah mengambil pekerja-pekerja dan melatih Rakyat Persekutuan dalam peringkat Eksekutif dan Teknikal hingga tingkatan Pengurus dengan menitikberatkan kepada pengambilan dan melatih orang-orang Melayu supaya sekurang-kurangnya 40% daripada semua tingkatan jawatan hendaklah dipenuhi oleh orang-orang Melayu.

6. Segala kekotoran yang dikeluarkan dari kilang ini seperti air ataupun debu hendaklah disalurkan kepada tempat/tempat-tempat yang ditentukan. Segala pelan-pelan yang menunjukkan bagaimana sampah sarap atau kekotoran akan disalurkan/dibuang hendaklah dipersetujukan terlebih dahulu oleh Pegawai-Pegawai yang ditentukan."

b) Example of the provisions of Express Conditions for Building land is as follows :-

"1. Tanah yang terkandung di dalam hakmilik ini hendaklah digunakan semata-mata untuk sebuah rumah teres biasa (Single Storey) jenis kekal dibina mengikut pelan yang diluluskan oleh Majlis Perbandaran Johor Bahru.

2. Bangunan yang didirikan di atas tanah yang terkandung dalam hakmilik ini hendaklah digunakan semata-mata untuk kediaman sahaja."

3.2.1.2 Lands Alienated Before the Commencement of the Act:

This refers to all land alienated by the exercise of powers conferred by any previous land law excluding mining land. Lands alienated under this category, will be subjected to the following conditions and restrictions in interest:

A. The Nature of Implied Conditions:

- (i) such implied conditions affecting all alienated lands (Section 114 of NLC),
- (ii) those conditions implied upon land which is subject to an express condition requiring its use for a particular purpose, and
- (iii) additional implied conditions applicable to town, village or country land in relation to the State in which it is located. (Schedule Two and Three of the Act).

B. The Nature of Express Conditions and Restrictions in Interest:

Such express conditions and restrictions in interest as endorsed on the document of land title or certificate of land title.

Note:

In cases where the implied conditions are inconsistent with any express conditions to which the land is for the time being subject, the express conditions will prevail.

A diagrammatic summary of Conditions and Restrictions in interest affecting alienated lands is depicted as per Figure 1.

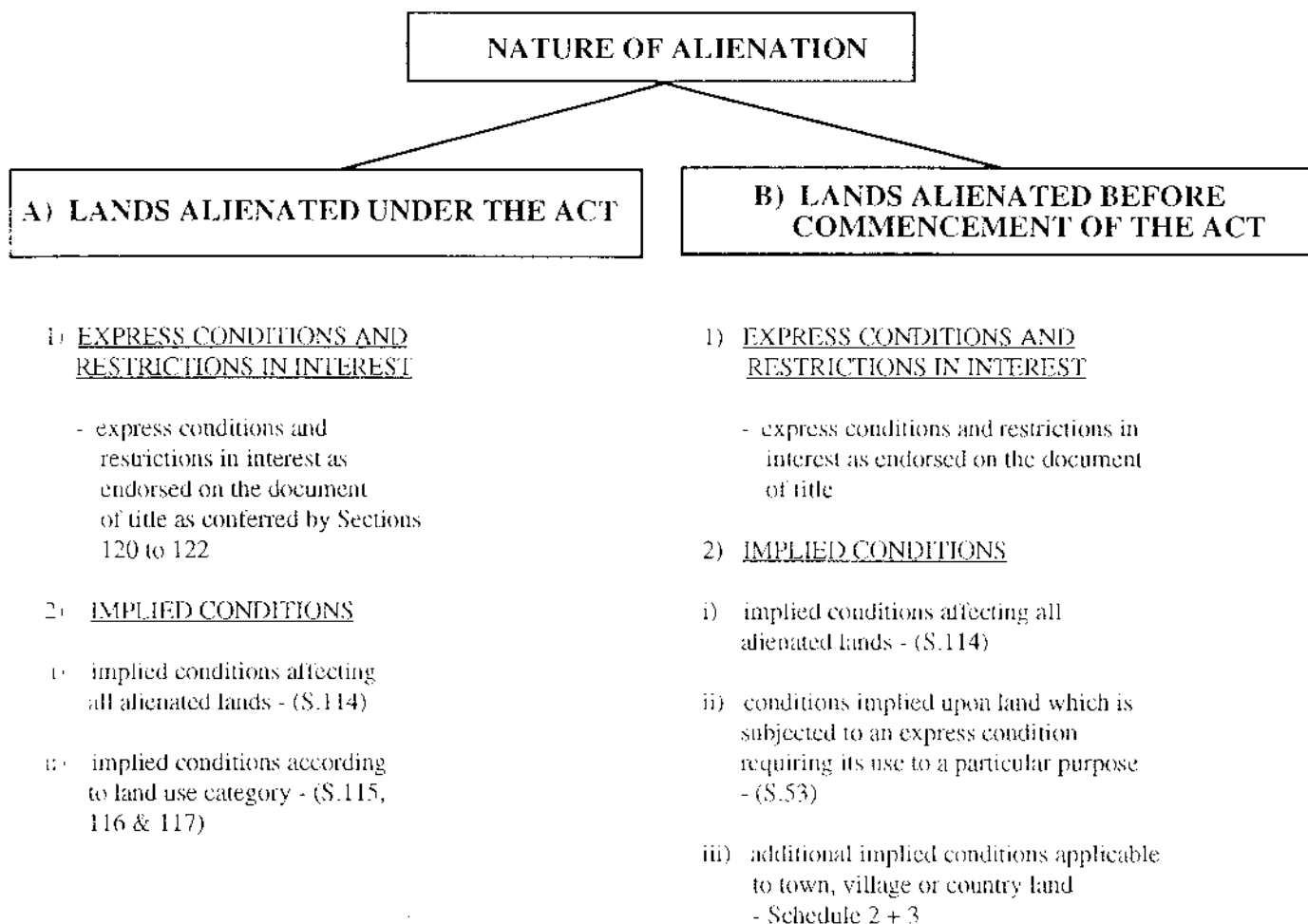


Figure 1: Summary of Conditions and Restriction in Interest Affecting Alienated Land

*** NOTE:**

THE ACT REFERS TO THE NATIONAL LAND CODE 1965

1.2 Restrictions in Interest Affecting Landed Property Ownership

Restrictions in Interest are commonly imposed to restrict ownership and transferability rights of landed property ownership, mainly aimed at balancing socio economic pattern of land ownership in the country.

Restrictions in Interest as practised in Malaysia relate to the following restrictive categories:-

- (i) Malay reservation restrictions;
- (ii) Bumiputra restrictions;
- (iii) Transfer of ownership restriction.

In practice all the three restrictions in interest can apply to one single property or they can apply individually, as the case may be.

Examples of the common provisions of Restriction in Interest is as follows:-

(a) Bumiputra Restriction:

"Tanah yang terkandung di dalam hakmilik ini, apabila sahaja bertukar miliknya kepada seorang Bumiputra, maka tidak boleh terkemudian daripada itu dijual, dipajak atau dipindahmilik dengan apa cara sekalipun kepada orang yang bukan Bumiputra tanpa persetujuan Penguasa Negeri".

The imposition of the above restriction in Interest, will result in future dealings in the said land being restricted within the Bumiputra (indigenous) group only.

(b) Transfer of Ownership Restrictions:

"Tanah yang dikurniakan ini tidak boleh dijual, dicagar, dipajak, digadai atau dipindahmilik dengan apa cara sekalipun termasuk dengan cara menggunakan segala surat perjanjian yang bertujuan untuk melepaskan/menjual tanah ini, tanpa kebenaran Penguasa Negeri".

The imposition of the above restriction in interest, will result in future transfer dealings of the said land being only enforceable with the written permission of the Penguasa Negeri (State Authority) this being so imposed to encourage and control land ownership within a certain socio-economic group (namely the landless who have been granted such alienated State lands.)

3.3 The relationship between the imposition of Category of Land Use, Conditions and Restrictions in Interest Affecting Alienated Land:

As mentioned previously, Category of Land Use imposed upon alienated land is aimed to enable the land administrator to ensure amongst others, order in development, maximum utilisation of land and identification for future acquisitions of lands within their administrative area.

In general the provisions of the Category of Land Use and Express Conditions imposed on alienated land, refers to the permitted usage of such land throughout the period of ownership as allowed for by the NLC. Details pertaining to the land use/development permitted according to the specific land use category are detailed out in the Implied Conditions as provided in Section 115 (Agriculture), Section 116 (Building) and Section 117 (Industry) of the NLC. In addition to such implied conditions of land use, additional conditions can be expressly endorsed in the land title as "Express Conditions" ____, it being additional conditions imposed (to govern future land use) in addition to the existing conditions as laid down in the provisions of the NLC according to the different category of land use.

Restrictions in Interest however relates specifically to any limitations imposed by the State Authority on any powers conferred on a proprietor by the NLC or any previous law.

Restrictions in interest commonly imposed on alienated lands in Malaysia mainly relates to restriction of ownership and transferability rights.

3.4 Implications of Conditions and Restrictions in Interest Affecting Alienated Land:

(i) Binding Capacity:

Every condition or restriction in interest imposed on alienated land, shall run with the land to which it relates and shall bind the registered proprietor and every person or body having or claiming any interest in the land for the time being.

(ii) Date of Commencement:

Every condition and restrictions in interest imposed, is commenced to run from the date of alienation of the land to which it relates (the relevant date).

(iii) Duration:

In relation to the meaning of the date of alienation, Section 78(3) of the NLC states that:

"The alienation of State land shall take effect upon the registration of a register document of title thereto ---- and, notwithstanding that its alienation has been approved by the State Authority, the land shall remain State Land until that time".

In effect, the relevant date of alienation is therefore the date when the alienation was registered. This normally is executed after full payment of premium and other fees have been duly made. In this respect, the date of alienation refers to the date the alienation was registered (tarikh didaftarkan) and not the date of commencement of title (tarikh keluaran suratan hakmilik).

Every condition requiring continuous performance and every restriction in interest, shall continue in force until the reversion to the State Authority.

4.0 CONVERSION OF LAND:

4.1 Definition:-

Conversion process involves the application by the proprietor of alienated land to the State Authority for alteration or imposition of category of land use, the recession or amendment of any express condition or restriction for purposes of development of the land or for purposes other than that is allowed at present.

4.2 The Approving Authority:-

The approving Authority is the State Authority

4.3 Application for Conversion:-

(i) Application to be made by using a form as prescribed in the State Land Rules. The application must include the following:-

(a) to state clearly the purpose of the conversion application i.e. to alter the category of land use, or to impose a category of land use or to rescind any express condition or restriction in interest, or to amend any expression, condition or restriction in interest or to impose new express condition.

(b) All persons or body having a registered interest in the land has consented to the application.

- (ii) The application is to be addressed to the Land Administrator of the District concerned and accompanied by the followings:-
 - (a) the necessary application fee prescribed
 - (b) plan of the land
 - (c) certificate of official search
 - (d) written consent of any person or body having registered interest in the land or having tenancy exempt from registration, if any
 - (e) all rent dues is paid

5.0 SUBDIVISION OF LAND:

5.1 Definition

Subdivision of land constitute the following components:-

- (a) land held under final title, whether Registry or land office title, is subdivided into two or more portions.
- (b) each portion to be held by the same proprietor or by the same co-proprietors under separate titles.

5.2 Reasons for Subdivision of Land

Amongst the reason for subdivision of land can be as follows:-

- (a) One proprietor holding one title
- (b) Subdivision of building space into Strata Title
- (c) Easy for purposes of future land dealings i.e. transfers, charges etc.

5.3 Application for Conversion

The application shall be in writing to the Collector in Form 9A, and accompanied by the following:-

- (i) such fees as may be prescribed
- (ii) a plan of the land
- (iii) a copy of any approval or consent required under provisions of section 136(i) (c) NLC
- (iv) all such written consents as required under provisions of Section 136(i),(e) NLC

5.4 Conditions for Approval of Subdivision (Section 136 NLC)

Subdivision of land can be approved upon complying to the satisfaction of the following conditions:-

- (a) there is no restriction in interest prohibiting the land from being subdivided.
- (b) it is not contrary to any of the provisions or requirement of any written law.
- (c) the planning Authority concerned has approved the subdivision of the land in question
 - for areas located within a local Authority area, the planning Authority refers to the local Authority
 - for areas located outside a local Authority area, the views of the State Town and Country Planning Department are obtained.
 - the consent of certain body/Authority established under the direction of Section 135(2) of the NLC has been obtained.
- (d) all items of land revenue has been duly paid
- (e) consents are obtained from every person/body having a certain interest in the land
- (f) the condition for approval of subdivision relating to the minimum area of each of the subdivisional portions is fulfilled - refer 136(f)(i) and (ii) NLC
- (g) the shape of subdivisional portion is suitable for the purposes for which it is intended to be used
- (h) the means of access is available to a road, river, a part of foreshore or a railway station.

NOTE:

The land for access within the lot is then deemed to have been surrendered to the State upon registration of separate titles for the subdivision portions.

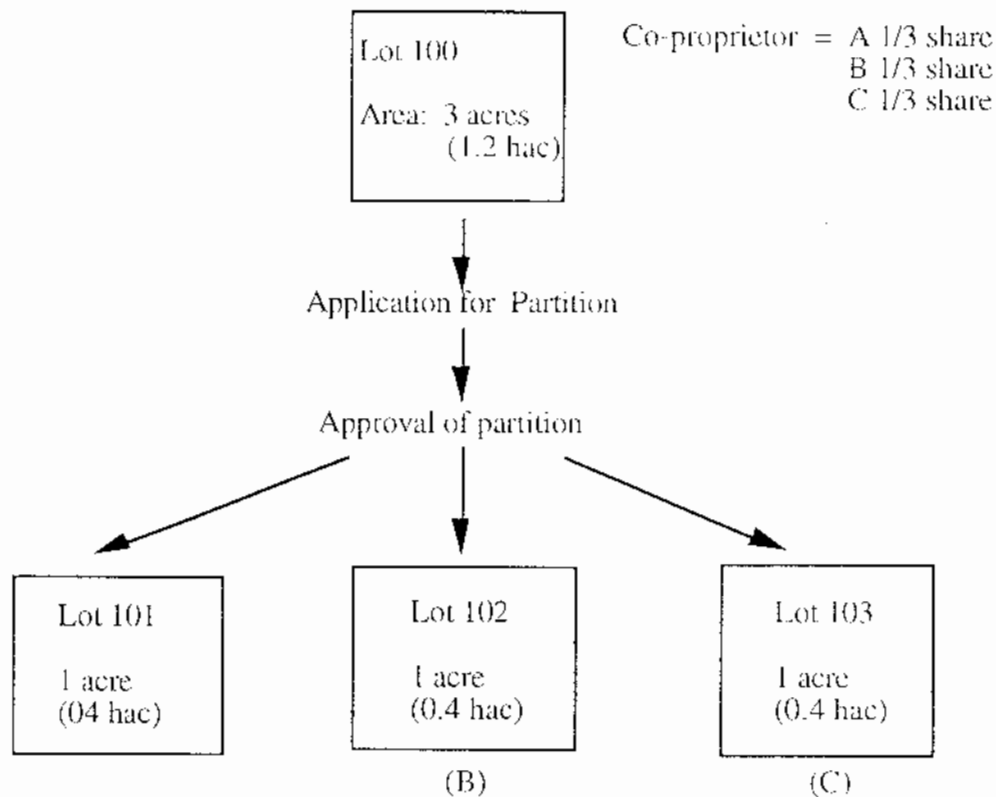
6.0 PARTITION OF LAND

6.1 Definition:

Partition of land constitute the following components:-

- (a) any alienated land held under final title, whether Registry or Land Office,
- (b) held by two or more persons as Co-Proprietors is partitioned so as,
- (c) to vest in each of them, under a separate title, a portion of the land of an area proportionate as nearly as may be to his undivided share in the whole.

Example:



Results:

- i) land partitioned into 3
- ii) each co-proprietor now has separate title
- iii) each co-proprietor owns land according to their undivided share

6.2 The Approving Authority: (S.135(2) of NLC)

In the absence of any direction to the contrary by the State Authority, the approval shall be given:-

- (i) by the State Director of Lands and Mines in the case of land held under Registry title, and
- (ii) by the District Land Administrator in the case of land held under Land Office title.

6.3 Application for Partition (Section 141 & 142 NLC)

- (i) A co-proprietor or co-proprietors holding the majority share in the land may apply for approval to partition the said land.
- (ii) Any application for approval of the partition of any land shall be made in writing in Form 9B and accompanied by;
 - a) such fee as may be prescribed;
 - b) a plan of the land and copies of plan as prescribed;
 - c) a copy of any approval or consent required by provisions of Section 136(i)(e) NLC;
 - d) the written consent to the making of the application of any co-proprietor who has not joined therein.

6.4 Conditions For Approval of Partition

Partition of land can be approved upon satisfactorily adhering to conditions required by the provisions of Section 141 NLC of which are as follow:-

- (i) each of the co-proprietor has either joined in, or consented to the making of the application for partition.
- (ii) the area to be vested in each co-proprietor must be as nearly as may be proportionate to his undivided share in the whole. The number of portions cannot exceed or be less than the number of the co-proprietors of the land.
- (iii) partition cannot be approved if the land is subject to a restriction or interest to the effect that partition cannot be done.
- (iv) partition cannot be approved if it is contrary to any provisions or requirement of any written law.

- (v) the planning authority has consented to the partition of the land in question.
 - In the case of land situated within a local authority area, the Local Authority is the planning authority.
 - In the case of land situated outside a local authority area, views of the State Town and Country Planning Dept. are normally sought.
- (vi) the consent of the body/authority established under the direction of the State Authority under the provisions of Section 135(2) of NLC has been obtained.
- (vii) all items of land revenue must be fully paid in respect of the land.
- (viii) written consent of every person/body entitled to the benefit of the charge, lease or lien (if any) at the time of the application is made, has been obtained.
- (ix) the area of any portion to the partition:
 - a) in respect of land subject to the Category "Agriculture", the area of any portion to the partition should not be less than one acre - (for Kelantan the portion shall not be less than half an acre) and;
 - b) in any other cases of land use Category, the area to be partitioned shall not be less than the minimum area as determined by the Local Authority in its capacity as a planning authority
- (x) the shape of the portion to be partitioned shall be suitable for the purposes for which it is intended to be used;
- (xi) all of the portion to be partitioned must have means of access to a road, river, a part of the foreshore or railway station.

NOTE:

The land for the access is deemed to have been surrendered to the State upon the registration of separate titles for the partitioned portions.

AMALGAMATION OF LAND

7.1 Definition:

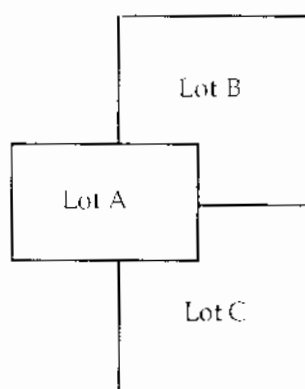
Amalgamation of land constitutes the following components:

- (a) two or more contiguous lots of alienated land held under separate final titles, under Registry or land office titles
- (b) held by a person are combined into one and to be held by him under one single title

Note:

For this purposes, any two or more lots are considered to be contiguous if each of them shares one boundary at least in common with another of them.

Example:

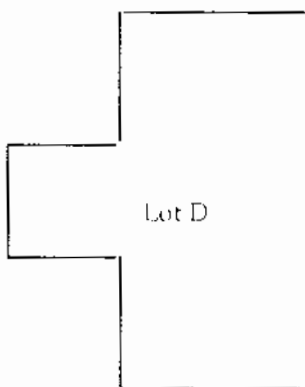


Conditions:

- (i) held under Final title
- (ii) owned by the same person

Application for Amalgamation

Approval for Amalgamation



Result:

- (i) Separate lots are now combined
- (ii) a single title is issued

7.2 Conditions for Amalgamation Approval:

- (i) the lands must be situated in the same town, village or mukim,
- (ii) if the lots are situated within the same town, village or mukim, they must not be held partly under Registry title and partly under Land Office title.

7.3 The Approving Authority:

The approval for amalgamation shall be given by:-

- (a) where the lots are all held under Land Office titles and their combined land area does not exceed ten acres, then the approving authority is the District Land Administrator
- (b) In all other cases it shall be the State Director of Lands and Mines

7.4 Conditions of Approval of Amalgamation:

Basically, the conditions of approval of amalgamation are the same as for approval of subdivision of land. However, for the cases narrated below, the sanction of the State Authority shall also be necessary before any amalgamation can be approved by the District Land Administrator or the State Director of Land and Mines as the case may be:-

- (i) where the lots to be amalgamated are all held under Registry title and their combined area exceeds ten acres (4 hectares) (i.e for lands with combined land area of 10 acres and more approval from State Director of Land and Mines is necessary, since the title will be Registry title issuance)
- (ii) where the lots to be amalgamated are held partly under Registry title and partly under Land Office title
- (iii) where dissimilarities exists between any of the following respect:-
 - (a) the land interest period/tenure eg (leasehold and freehold)
 - (b) the rent rates payable
 - (c) the categories of land use, condition and restrictions in interest to which they are subject to.

CONCLUSION

The imposition of Category of Land Use, Conditions and Restrictions in Interest affecting alienated land are mainly aimed to enable land administrators to ensure amongst others:-

- a) Order in development;
- b) Maximum utilisation of land;
- c) identification for future acquisitions of land; and
- d) aimed at balancing socio economic pattern of land ownership in the country

In practice it is the land owners who have to abide to the imposition of such conditions and restrictions, with the State Authority having to enforce them.

Flexibility of ownership rights especially pertaining to land use and economic size of land held is also given to land owners via the provisions of conversion, subdivision, partition and amalgamation of land.

However such applications would have to be screened by the State Authority in accordance with the provisions imposed and in the light of ensuring order in development, maximum utilisation of land and balancing socio economic pattern of land ownership in the country.

The enforcement of conditions and restrictions in interest, conversion, subdivision, partition and amalgamation of land by the State Authority should be carried out within the following context:-

- i) Flexibility of land use to encourage economic and social activity and growth;
- ii) need for more interaction between the Land Office, the enforcing authority and the other related departments when recommending/approving applications;
- iii) swift and efficient enforcement to be taken to discourage non uniformity of land use or unwanted development so as to ensure the objectives of land use control is attained;
- iv) provision and upgrading of advisory services to landowners to encourage proper, manageable and planned development within the State's administrative area.

References:

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